



TOPSFIELD POLICE DEPARTMENT

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Neal S. Hovey
Chief of Police

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Via e-mail to: Testimony.HWMJudiciary@mahouse.gov

Re: Concerns to Senate 2820 as Amended

Dear Chair Aaron Michlewitz and Chair Claire Cronin, please accept the following testimony regarding SB2820 – An Act to reform police standards and shift resources to build a more equitable, fair, and just commonwealth that values black lives and communities of color.

As a dedicated and committed police leader, I will continue to embrace the challenges that lay ahead, instill strong values into my police department at all ranks, hold my officers completely accountable for all our actions, and work through these difficult and turbulent times to build a more cohesive future for our communities. With that, I would like to provide the following testimony:

Although I could go on and on about how perplexed I am about the political process of passing a critical career altering bill, I will focus my testimony on the elements of the bill that need attention and are paramount in preserving our profession.

Currently, I am not aware of an industry leader that opposes the POST concept. It has been successful in 46 other states, so I am not sure why we are trying to reinvent the wheel. Also, for the last 20 plus years we have an independent organization called Massachusetts Police Accreditation Commission which is the gold star standard for best police practices. As an accredited department, we must adhere to over 300 standards, holding our department and officers to the highest standard of policing. A Massachusetts accredited police department is an agency that has demonstrated through an assessment by independent auditors that we comply and have met the National Standards of best practices for police agencies. The National standards reflect the best professional practices in police management, administration, operations, and support services.

Achieving Accreditation is a highly prized recognition of law enforcement professional excellence. As an accredited department, we are required to have proper policies in place and equally important is to ensure that these policies are being followed. We are also required by policy to annually review, analyze, and report any use of force and bias policing issues that arise as well as submitting all incidents of use of force to the FBI. Achieving and maintaining accreditation is not an easy task. We have chosen to do this despite its difficulties because of its high level of accountability. I strongly believe that all police departments should adhere to such standards as we call upon our community to work with us as we continue to hold ourselves to these high standards of policing and accountability. We are a proud part of this community and are dedicated to serving the community members. I sincerely hope that you will look to our evolution and series of accomplishments over the years. Topsfield's officers have and will continue to faithfully dedicate their lives to the service and protection of our town.



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In addition, the proposed Senate POSAC language provides the POSAC with widespread and undefined authority. This authority includes both unlimited subpoena power, and the authority to conduct investigations. The proposed POSAC language does not provide a process or standard of proof for investigations. As written POSAC will have authority to step into on-going police and DA investigations. The proposed POSAC language provides unlimited subpoena power with no oversight. It creates an arbitrary process where subpoenas can be issued by the chair alone or just any three committee members. As written, the proposed POSAC can choose to do an investigation on anything it chooses without basis. Rather than reinventing the wheel, we established a POST standard of training and maintained our existing Massachusetts Police Training Accreditation Commission, rather than creating a new oversight committee or commission.

Qualified Immunity is problematic, not only for law enforcement in the Commonwealth, but all public employees. Section 10 calls for a re-write of the existing provisions in Chapter 12, section 11I, pertaining to violations of constitutional rights, commonly referred to as the Massachusetts Civil Rights Act (MCRA). Section 10 of the Act would change that, and permit a person to file suit against an individual, acting under color of law, which deprives them of the exercise or enjoyment of rights secured by the constitution or laws of the United States or the Commonwealth of Massachusetts. By doing so, the Senate is attempting to draw the parallel between the federal section 1983 claim and the state based MCRA claims. The doctrine of qualified immunity shields public officials who are performing discretionary functions, not ministerial in nature, from civil liability in § 1983 [and MCRA] actions if at the time of the performance of the discretionary act, the constitutional or statutory right allegedly infringed was not clearly established.

Section 1983 does not only implicate law enforcement personnel. The jurisprudence in this realm has also involved departments of social services, school boards and committees, fire personnel, and various other public employees. If the intent of the Senate is to bring the MCRA more in line with section 1983, anyone implicated by section 1983, will likewise be continued to be implicated by the provisions of the MCRA. Notably, the provisions of the MCRA are far broader, which should be even more cause for concern for those so implicated.

Section 10 of the Act further sets for a new standard for the so-called defense of “qualified immunity”. Section 10(c) states that in an action under this section, qualified immunity shall not apply to claims for monetary damages except upon a finding that, at the time the conduct complained of occurred, no reasonable defendant could have had reason to believe that such conduct would violate the law.

Although legal scholars and practitioners have a grasp as to the meaning of qualified immunity as it exists today, uncertainty will abound if this standard is re-written, upending nearly fifty years of jurisprudence. Uncertainty in the law can only guarantee an influx in litigation as plaintiffs seek to test the new waters as the new standard is expounded upon by the courts.



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Another provision that is problematic to the law enforcement industry, is to have public hearings available for all in the general public to know exactly what equipment the police departments may or may not possess serves to put communities in jeopardy in that those with nefarious motives will be informed as to what equipment that the department has at its disposal. This is extremely dangerous.

The provision for the prevention of school department personnel and school resource officers who are invited to the schools from sharing information with law enforcement officers –including their own agency –

when there are ongoing specific unlawful incidents involving violence or otherwise. This quite frankly defies commonsense. School shootings have been on the rise since 2017. Did the Senate quickly forget about what occurred in Parkland, Florida on February 14, 2018? The learning environment in our schools must continue to be safe and secure as possible and information sharing is critical to ensuring that this takes place. Public Safety 101.

In regards to the training of police officers, to be clear, we do not teach, train, authorize, advocate or condone in any way that choke holds or any type of neck restraint that impedes an individual's ability to breathe be used during the course of an arrest or physical restraint situation. What should also be included is a commonsensical, reasonable, and rational provision that states, "unless the officer reasonably believes that his/her life is in immediate jeopardy of imminent death or serious bodily injury." There needs to be a deadly force exception to eliminate any possible confusion that this could cause for an officer who is struggling for their life and needs to avail themselves of all means that may exist to survive and to control the subject. This is a reasonable and straightforward recommendation.

Respectfully,

Neal S. Hovey

Chief of Police